

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

REYNALDO CAMACHO.

CASE NO. 09-CV-1572 JLS (WMC)

Plaintiff,

ORDER: GRANTING MOTION TO DISMISS

WACHOVIA MORTGAGE, FSB; et al.,

(Doc. No. 35)

Defendants.

Presently before the Court is Defendants' motion to dismiss the Third Amended Complaints (TAC). (Doc. No. 35.) Plaintiff opposes this motion and Defendants have replied. (Doc. Nos. 37 & 38.) Having fully considered this motion, the Court **GRANTS** the motion.¹

LEGAL STANDARD

Federal Rule of Civil Procedure 12(b)(6) permits a party to raise by motion the defense that the complaint “fail[s] to state a claim upon which relief can be granted,” generally referred to as a motion to dismiss. The Court evaluates whether a complaint states a cognizable legal theory and sufficient facts in light of Federal Rule of Civil Procedure 8(a), which requires a “short and plain statement of the claim showing that the pleader is entitled to relief.” Although Rule 8 “does not require ‘detailed factual allegations,’ . . . it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation.” *Ashcroft v. Iqbal*, – US —, 129 S. Ct. 1937, 1949 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). In other words, “a plaintiff’s

¹ Since the parties are fully aware of the facts, they are not repeated here.

1 obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels and
 2 conclusions, and a formulaic recitation of the elements of a cause of action will not do.” *Twombly*,
 3 550 U.S. at 555 (citing *Papasan v. Allain*, 478 U.S. 265, 286 (1986)). “Nor does a complaint
 4 suffice if it tenders ‘naked assertion[s]’ devoid of ‘further factual enhancement.’” *Iqbal*, 129 S. Ct.
 5 at 1949 (citing *Twombly*, 550 U.S. at 557). Rule 8 “does not unlock the doors of discovery for a
 6 plaintiff armed with nothing more than conclusions.” *Id.* at 1950.

7 “To survive a motion to dismiss, a complaint must contain sufficient factual matter,
 8 accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Id.* (quoting *Twombly*,
 9 550 U.S. at 570); *see also* Fed. R. Civ. P. 12(b)(6). A claim is facially plausible when the facts
 10 pled “allow[] the court to draw the reasonable inference that the defendant is liable for the
 11 misconduct alleged.” *Id.* (citing *Twombly*, 550 U.S. at 556). That is not to say that the claim must
 12 be probable, but there must be “more than a sheer possibility that a defendant has acted
 13 unlawfully.” *Id.* Facts “merely consistent with” a defendant’s liability fall short of a plausible
 14 entitlement to relief. *Id.* (quoting *Twombly*, 550 U.S. at 557). Further, the Court need not accept
 15 as true “legal conclusions” contained in the complaint. *Id.* This review requires context-specific
 16 analysis involving the Court’s “judicial experience and common sense.” *Id.* at 1950 (citation
 17 omitted). “[W]here the well-pleaded facts do not permit the court to infer more than the mere
 18 possibility of misconduct, the complaint has alleged—but it has not ‘show[n]’—‘that the pleader is
 19 entitled to relief.’” *Id.*

20 **ANALYSIS**

21 **I. TRUTH IN LENDING ACT DAMAGES CLAIM**

22 Plaintiff’s first cause of action is for damages under the Truth in Lending Act (TILA).
 23 (TAC PP 9–34.) In this Court’s Prior Order it stated: “because Plaintiff filed this action beyond
 24 the statute of limitations and has not pled facts that would entitle him to equitable tolling, his claim
 25 for damages under TILA is **DISMISSED WITH PREJUDICE.**” (Doc. No. 31 at 4.) Given this
 26 holding, Plaintiff was not free to include this claim in the TAC and the first cause of action must
 27 again be **DISMISSED.**

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1 **II. TRUTH IN LENDING ACT RESCISSION CLAIM**

2 The second cause of action is also based on TILA, but seeks a rescission of the loans in
 3 question. (TAC ¶¶ 35–38.) He claims that Defendant Wachovia violated TILA in four ways: (1)
 4 it did not disclose the interest rate in a sufficiently clear and conspicuous manner, (2) its disclosure
 5 regarding the interest rate is neither clear nor conspicuous, (3) the disclosures are intentionally
 6 deceptive, and (4) it did not disclose the interest rate in several documents. (*Id.* ¶ 19.)

7 In this Court’s Prior Order, it exercised its discretion and required Plaintiff to “plead his
 8 ability to tender in order to maintain his claim for rescission.” (Doc. No. 31 at 4–5.) The reason
 9 for this was that “[i]t would be a waste of the time and resources of the parties and the Court to
 10 proceed to the point of rescission only to have Plaintiff be unable to tender.” (*Id.* at 5.)

11 Defendants argue that this matter should be dismissed because Plaintiff has not alleged his
 12 ability and willingness to tender the amount of his loan.² (Memo. ISO Motion at 3.) Defendants
 13 are correct. Plaintiff added the following allegation to the TAC:

14 Plaintiff is prepared to rescind the real estate agreement with the Defendant
 15 WACHOVIA on the following basis: A. That all derogatory credit information
 16 caused by the Defendant be expunged from Plaintiff’s credit profile; B. That all
 17 payments and other credits and debits for the entire tenancy have been accounted
 18 for; C. Plaintiff shall thereupon make a rescission payment to the extent of the
 19 amount borrowed, but not to exceed the fair market value of the realty arrived at
 20 either by stipulation of all the parties or by finding of the Court.

21 (TAC PP 37.)

22 This is inadequate. Plaintiff conditions his willingness to repay on restitution to which he
 23 may or may not be entitled at the end of this matter. Such conditions place the cart before the
 24 horse. In order to proceed, Plaintiff must be prepared to rescind even in the event that he is not
 25 entitled to the other requests he makes.

26 He also only expresses a willingness to repay up to “the fair market value of the realty.”
 27 This condition is contrary to the most basic principles of rescission and therefore unacceptable.
 28 Rescission places the parties to a contract in the same position they were before the contract was

2 Defendants also argue that the rescission claim is time barred. (Memo. ISO Motion at 3–4.) The Court elects not to address this concern for two reasons. First, it is unnecessary since Plaintiff still has failed to show that he is willing to properly tender. Second, Defendants’ arguments require this Court to delve into the merits of a conflict between Plaintiff’s allegations and Defendants’ proffered evidence. The Court believes that this is a conflict better resolved on a motion for summary judgment than on a motion to dismiss.

1 entered. In this case, that means Plaintiff must be willing and able to repay the full principal of his
2 loans, regardless of the current market value of the real estate.

3 Plaintiff argues that “it would be absurd to require [him] to repay more than the home’s
4 value simply to enrich the bank beyond its expectations at the time of the subject transaction.”
5 (Opp. at 2.) This misses the entire point of rescission. The bank made these loans expecting to
6 recoup the principal along with interest. As such, rescission does not “enrich the bank beyond its
7 expectations at the time of the subject transaction.” (*Id.*) It simply puts the bank back where it
8 started.

9 Moreover, this argument effectively requires the Defendants should bear the risk of market
10 volatility. However rescission does not require them to shoulder such a burden. Instead, it simply
11 requires both parties to return the other to its starting position. This places the burden of a
12 negative market swing on the borrower, not the lender. For this reason alone, the TAC must be
13 **DISMISSED.**

14 **CONCLUSION**

15 For the reasons stated, Defendants’ motion to dismiss is **GRANTED** and this matter is
16 **DISMISSED.**

17 **IT IS SO ORDERED.**

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19 DATED: August 24, 2010

20 
21 Honorable Janis L. Sammartino
22 United States District Judge
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